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Using Graymail Prosecutio

The man known only as M rested his elbows on the table as James Bond opened the bottle of Tattinger blanc de blancs 1964, carefully levering off the cork. It popped without robbing the champagne of any carbonation. M furrowed his eyebrows and began: "James..."

James Bond was uneasy. The chief of Britain's Secret Service usually addressed him as 007, using the code number that gave him a license to kill on behalf of Her Britannic Majesty.

"James," M repeated, "we're going to take away your double-oh number."

"But why, sir? I've..."

"We're giving you a better situation, James. You'll be seconded to the American CIA. There you will have a top-secret security clearance, which lets you — M allowed himself the tiniest of smiles — "do all the things you do for us, plus one: If you're caught, you'll never be prosecuted. Just threaten to reveal some state secrets, and they'll let you go."

By JOHN MILNE

There wasn't much fiction in that fragment of a spy story stolen from Ian Fleming. The United States has recently found itself unable to prosecute anyone, from the nether world of spying who breaks the law.

There is no question about guilt or innocence; these spies usually admit the crimes charged. However, they have learned well the techniques of chantage — extortion by threatening scandalous revelations — which they used as spies. The defendant threatens a revelation; the intelligence community refuses to discuss it because the information is classified, and the Justice Department is forced to drop the case.

The defendants are protected by the Constitution's requirement of a speedy and public trial. Unless the government is willing to make relevant information public, there can be no trial. It's painfully legal. That's why chantage also is called graymail — a shade lighter than blackmail.

TWO RECENT public cases of chantage involved two officers of a private company, International Telephone and Telegraph Corp: Robert Berrellez and Edward J. Gerrity were charged in separate cases with perjury and the Justice Department decided it was better to let them go rather than risk disclosure of "secrets."

Neither Berrellez nor Gerrity was a professional spy. Both worked for ITT during 1970, the year Salvador Allende was elected president of Chile.

With Richard Nixon's consent, the CIA and ITT allegedly funneled hundreds of thousands of dollars to Allende's right-wing opponents. They failed; Allende became the first popularly elected Marxist. He was later deposed in a coup, with the CIA and ITT lurking on the periphery.

Congress tried to find out how much the CIA was involved, so Berrellez and Gerrity were called to testify in 1973. They denied knowledge of the shenanigans. Last year, the Justice Department charged them with lying to Congress about the activities of the CIA, a government agency that Congress presumably supervises.

ALL WE know about these maneuvers come from court documents and the transcript of a hearing on the Berrellez case that was leaked to The Nation, a left-leaning magazine. In that hearing, lawyer Patrick Wall said part of Berrellez'

defense would be that the CIA conspired with the ITT executives, participating in the perjury just as it had in the Chilean escapade. In fact, said Wall, Chilean Foreign Minister Hernan Cubillos provided information through the CIA that eventually appeared in Berrellez' testimony.

Cubillos is widely known as a friend of the CIA, if not the active American spy that some of the court papers suggest. Prosecutor John Kotelly suggested to Judge Aubrey E. Robinson that this entire issue be discussed out of the presence of the jury, since Berrellez' defense might divulge "sources of information that the Central Intelligence Agency was relying on in Chile."

Robinson rejected the idea, ruling that any intelligence data that was six years old and already given to a private multinational corporation could be relevant to a perjury charge and should be discussed openly.

Kotelly ended the argument last month, declaring: "Because of national security reasons, we cannot proceed in the case of Robert Berrellez."

Gerrity got off two weeks ago. "The reason," said Kotelly, "is to protect classified national-security information from public disclosure."

THESE ARE not unique, isolated events. Former CIA Director Richard Helms was involved in the same escapade. He was charged with perjury, too; but Helms was allowed to plead no-contest to the lesser charge of not testifying fully before Congress. Sources in the intelligence community say Helms threatened to use as his defense that the CIA lied to Congress regularly — and spell out when and where.

There is every indication that lawyers for former FBI Director L. Patrick Gray have negotiated the Justice Department to a standoff in a civil-rights case involving the FBI's attack on the terrorist Weather Underground. Gray, assistant director Mark Felt, and domestic intelligence director Edward S. Miller are charged with conspiracy, with ordering illegal burglaries into private homes of friends and relatives of alleged Weatherman bombers.

Felt and Miller have won Judge William Bryant's permission to argue that their activities were sanctioned by higher-ups, a ruling that a Justice Department spokesman said "raises problems for the government regarding... ultimate disclosure of classified data."

The Justice Department hinted last week that it may have to drop its case against Gray to protect other FBI adventures such as the break-in at the Southern Methodist University Center in Dallas. That break-in, an effort to protect American Jews from Al Fatah terrorist agents, was reportedly authorized